IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

WP(C).No. 31344 of 2007(F)

PETITIONER:

USHA JOHNSON,
CHARUVILA PUTHENVEEDU, AMBIPOIKA,
KUNDARA, KOLLAM – 691 501.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD

RESPONDENTS:

---

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY, DEPARTMENT OF TRANSPORT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2. THE SECRETARY, LABOUR AND REHABILITATION (H) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM – 695 001.

3. THE KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
KOLLAM, REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER, 691 001.

4. THE REGIONAL TRANSPORT OFFICER (TAXATION OFFICER), 691 001.
KOLLAM.

BY GOVERNMENT PLEADER SRI, A.J. VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/10 /2007 / THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P.(C)No.31344 OF 2007

Dated this the 22nd day of October, 2007

JUDGMENT

The petitioner is the owner of a motor transport undertaking. He has filed this writ petition for a direction to the 3rd respondent to accept motor vehicles tax in respect of the vehicles owned by the petitioner without insisting on production of receipt of payment of Welfare Fund Contribution as provided under Section 8A of the Kerala Motor Transport Workers Welfare Fund Act 1985 and to declare that the petitioner is not liable to pay any contribution towards workers welfare fund so long as there is no statutory prohibition against engaging the workers without registration in her vehicles.

2. The petitioner does not challenge the validity of Section 8A of the Act. Her contention is that the Act does not contain any specific prohibition against engaging motor transport workers, who are not members of the welfare fund. According to her, the membership is optional and only those workers who are desirous of being members of the welfare fund need get

registered themselves as members of the Fund. The petitioner would contend that the workers employed by the petitioner are not desirous of being enrolled as members of the Fund and therefore the 3rd respondent cannot insist on production, by the petitioner, of receipt of payment of Welfare Fund Contribution as provided under Section 8A of the Kerala Motor Transport Workers Welfare Fund Act. The petitioner relies on Clause 27 of Motor Transport Workers Welfare Fund Scheme which has been extracted in the writ petition which reads thus:

> "(1) Every employee and self employed person who desirous to be employed as a Motor Transport Worker and qualified to be employed in a Motor Transport undertaking, if not already registered as a member of the fund, shall submit in person an application for membership of nomination in Form No.1 before the concerned District Executive Officer or the Additional District Executive Officer of the Kerala Motor Transport Workers Welfare Fund Board. Such application shall be accompanied with two stamp size recent photographs of the applicant and an amount of Rs.25/ towards fee for registration."

The petitioner stresses the words 'who is desirous to be

employed as a motor transport worker' I am of opinion that these words themselves contain the prohibition of employments of workers who are not registered under the Fund. The option in Clause 27 does not apply to membership of the Fund but applies to being employed as motor transport worker. That would definitely mean that if a person wants to be employed as a motor transport worker, he is liable to be registered as member of the Fund as well and not the other way round.

In the above circumstances, I do not find any merit in the writ petition and accordingly the same is dismissed.

S. SIRI JAGAN, JUDGE

Acd